

**KENTUCKY PERSONNEL BOARD
MINUTES OF MAY 16, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on May 16, 2008, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman
Christine J. Goodmann, Vice-Chairman
Betty Gibson, Member
Lisa T. Hendricks, Member
Robert B. Frazer, Member
M. Suzanne Cassidy, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD APRIL 11, 2008**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Higgins asked for additions or corrections. Ms. Gibson moved to approve the minutes as submitted, Ms. Cassidy seconded, and the motion carried 5-0. (Chairman Higgins does not vote unless noted). The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that at the April 2008 Board meeting, Mr. Andrews suggested changing some language in the minutes. Mr. Sipek stated there is a case pending (*DJJ v. Stotts*) that directly relates to an issue that concerned Mr. Andrews. He further stated that he should have some language for the Board members to consider at the June Board meeting.

Mr. Sipek advised that he and Mr. Crocker attended a training session presented by the Kentucky Association of Administrative Adjudicators. Mr. Crocker participated on a panel concerning how active hearing officers should be during a hearing with an emphasis on *pro se* litigants. Mr. Sipek stated that he participated on a panel involving evidence questions that come up during administrative hearings. Mr. Sipek stated that Mr. Crocker is President Elect of that organization.

Mr. Sipek discussed the following court rulings:

Priscilla Miller. Board reversed in a discriminatory case, not significant ruling.

Supreme Court denied discretionary review and opinions ordered not to be published in the following cases:

Jo Ann Searcy – Personnel Board not made a party and the issue was not discussed in the opinion. However, the Personnel Board's ruling was upheld.

Pam Perkins – the Court's opinion held that written reprimands were not appealable actions.

Chairman Higgins asked if the *Perkins'* case would be cited in Board orders. Mr. Sipek advised that Board cases are often cited to show consistency in Board rulings.

Lastly, in *Michelle Pitird's* appeal, the Personnel Board's ruling was upheld.

Mr. Sipek updated the Board concerning the office move. Carpet will be installed in the conference/hearing rooms in June. He advised that the rooms should be ready for Board meetings by July 2008.

At the conclusion of Mr. Sipek's report, Chairman Higgins asked for the Personnel Cabinet's Report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington, Staff Attorney for Legal Services, was present for the Personnel Cabinet and reported the following:

Ms. Bevington apologized to the Board members for the Personnel Cabinet not attending last month's Board meeting.

Ms. Bevington stated that as of May 15, 2008, there is no more testing. Class specifications will be amended reflecting that change.

Since the inception of the Career Opportunities System (COS), 28,000 applicants have applied electronically for positions.

Kentucky Human Resource Information System (KHRIS) is still on schedule and within budget, set to be implemented January 1, 2009.

Ms. Bevington stated that was all she had to report, unless there were some questions. Mr. Sipek pointed out that Personnel Cabinet appeals are down. The Cabinet's appeals are currently handled by scheduling pre-hearing conferences instead of going straight to an evidentiary hearing. The new COS is responsible for keeping Personnel Cabinet appeals down.

5. MOTIONS

- A. Julie Badgett v. Commerce Cabinet
--Appellant's Renewed Request for Order Consistent with Judgment
--Appellee's Objection to Renewed Request
--Appellant's Response to Objection

Present were the Hon. Paul Fauri, counsel for Appellant, and the Hon. Catherine York, counsel for Appellee. The parties answered questions from the Board.

- B. Robert Dungan v. Transportation Cabinet
--Appellee's Motion for Leave to File Late Response

Present were the Hon. Paul Fauri, counsel for Appellant, and the Hon. Paul Harnice, counsel for Appellee. The response was distributed to the members.

Mr. Frazer moved to grant Appellee's Motion for Leave to File Late Response. Ms. Goodmann seconded and the motion carried 5-0.

- C. Dan Hall v. Transportation Cabinet
-- Motion for Evidentiary Hearing
--Appellant's Response
--Appellee's Supplemental Filing

Present was the Hon. Stuart Burch, counsel for Appellee.

Ms. Cassidy moved to grant Appellee's Motion for Evidentiary Hearing. Mr. Frazer seconded and the motion carried 5-0.

6. ORAL ARGUMENTS

- A. Robert Dungan v. Transportation Cabinet

Present were the Hon. Paul Fauri, counsel for Appellant, who had requested oral arguments, and the Hon. Paul Harnice, counsel for Appellee. The parties answered questions from the Board.

7. REQUESTS FOR INVESTIGATION

- A. Anonymous request concerning Kentucky Horse Park
-- Response by Commerce Cabinet

Present were the Hon. Misty Judy, Assistant Counsel, Commerce Cabinet; Ms. Stephanie Gibson, Personnel Branch Manager of the Kentucky Horse Park; and Janshid Baradaran, Division Director for Grounds and Buildings, Kentucky Horse Park.

Ms. Judy advised the Board that she investigated the anonymous complaint. She advised that there have been a series of anonymous complaints since 2004. Ms. Judy spoke to all the maintenance workers, none of them had any complaints as complained of in the anonymous complaint. This type of complaint usually comes about during each administration change. Ms. Judy stated that there is no information to substantiate the complaint and that there is no further need to investigate. However, she feels the complaint borders on harassment, specifically pertaining to Ms. Stephanie Gibson. Mr. Frazer asked Ms. Stephanie Gibson how long she had been employed at the Horse Park, to which she replied since 1980. In response to Ms. Judy's question, Ms. Stephanie Gibson stated that she has been in the Personnel Branch since 1985. Mr. Frazer stated that if the parties wanted an investigation he was not opposed to it; however, since the complaint had been investigated during two administrations with the same determination, there is probably no need for the Board to investigate. Ms. Stephanie Gibson said that she was very concerned about the complaints, which were untrue and unfounded.

Ms. Hendricks moved to deny the request for investigation; Mr. Frazer seconded and the motion carried 5-0.

8. CLOSED SESSION

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Goodmann seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (10:40 a.m.)

Mr. Frazer moved to return to open session. Ms. Gibson seconded and the motion carried 5-0 (11:35 a.m.)

9. **MOTIONS**

Julie Badgett v. Commerce Cabinet

--Appellant's Renewed Request for Order Consistent with Judgment

--Appellee's Objection to Renewed Request

--Appellant's Response to Objection

Ms. Hendricks moved that the Appellee be ordered to return Appellant to work in a similar position in close geographic vicinity within thirty (30) days. Ms. Cassidy seconded and the motion carried 4-1, with Mr. Frazer opposing.

10. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Nikki Townsend v. Cabinet for Health and Family Services (**Deferred from April**)

Ms. Hendricks moved to note Appellee's exceptions, Appellants' Response and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal. Ms. Gibson seconded and the motion carried 4-0, with Mr. Frazer abstaining.

B. Robert Dungan v. Transportation Cabinet

Mr. Frazer moved to note Appellant's Exceptions, Appellee's Response and oral arguments and to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 4-0. [Ms. Hendricks recused herself and did not participate in any discussion of the case.]

C. Tamara Bounds v. Justice and Public Safety Cabinet (On Remand)

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

D. Patrick Collins v. Auditor of Public Accounts

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

E. Pamela David v. Justice and Public Safety Cabinet

Ms. Gibson moved to accept the recommended order sustaining the appeal. Ms. Goodmann seconded and the motion carried 5-0.

F. Randal Hayslett v. Administrative Office of the Courts (2 appeals)

Ms. Hendricks moved to accept the recommended order dismissing the appeals. Mr. Frazer seconded and the motion carried 5-0.

G. Carnell Lightfoot v. Transportation Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

H. Wendy Amburgey v. Justice and Public Safety Cabinet

I. James Burke v. Personnel Cabinet

J. Jeffery Rice v. Transportation Cabinet and Scott Huddleston

Ms. Hendricks moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Gibson seconded and the motion carried 5-0.

11. **WITHDRAWALS**

Mr. Frazer moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Cassidy seconded and the motion carried 5-0.

A. John Beane v. Transportation Cabinet

B. Keisha Claybrooks v. Personnel Cabinet

C. Stanley Cooper v. Personnel Cabinet

D. Connie Hill v. Transportation Cabinet

E. Donald Kline v. Cabinet for Health and Family Services

F. Timothy Meador v. Environmental and Public Protection Cabinet

G. Jennifer Menefee v. Personnel Cabinet

H. Alicia Parham v. Health and Family Services

I. George Phillips v. Transportation Cabinet

J. Judy Stidham v. Transportation Cabinet

K. Chris Valandingham v. Justice and Public Safety Cabinet

L. Bryan Wilson v. Personnel Cabinet

12. SETTLEMENTS

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Mr. Frazer seconded and the motion carried 5-0.

- A. Laurie Davison v. Commerce Cabinet
- B. Jesse Foster v. Transportation Cabinet

13. OTHER

- A. Employment of Hearing Officers for FY 2008-2010

Ms. Gibson moved that the following persons: Jackson Andrews, Colleen B. Beach, Steven G. Bolton, James L. Dickinson, Geoffrey B. Greenawalt, Janet M. Hall, Stephen T. McMurtry, Roland P. Merkel, Matthew Mooney, Patrick Moores, Kim Hunt Price, John C. Ryan, Ann Sheadel and Hanson Williams be employed as hearing officers for the Personnel Board for the period of July 1, 2008, through June 30, 2010, and further move that the Executive Director of the Personnel Board be authorized to take the necessary actions and execute the necessary documents to effect the employment of these persons. Mr. Frazer seconded and the motion carried 6-0 (with Chairman Higgins voting).

Chairman Higgins asked if there was any further business, which Mr. Sipek advised there was not.

There being no further business, Ms. Hendricks moved to adjourn. Mr. Frazer seconded, and the motion carried 5-0. (11:40 a.m.)

Greg Higgins, Chairman

Christine J. Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa T. Hendricks, Member

Robert B. Frazer, Member

M. Suzanne Cassidy, Member